

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MANUEL CABRERA-ALEJANDRE,
BOP #09376-097,

Plaintiff,

vs.

U.S.A; FRED LAWRENCE, CEO/Warden;
DAVID LUSCHE, Lieutenant; JOHN DOES
1-5; JANE DOES 1-5; LINDSTEDT, Health
Services Administrator; SORIA QUAWITY,
Assoc. Health Service Administrator;
R. MURRELL, Grievance Committee
Member; M. LAKE, Grievance Committee
Member; S. SORIA, Grievance Committee
Member; RIVERA, Supervisor of Unit B/G,

Defendants.

Civil No. 09-0846 WQH (AJB)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO PROCEED
IN *IN FORMA PAUPERIS*
PURSUANT TO
28 U.S.C. § 1915(a)**

Plaintiff, a federal inmate currently incarcerated at the Federal Correctional Complex in Petersburg, Virginia and proceeding pro se, has filed a civil action pursuant to *Bivens v. Six Unknown Named Federal Narcotics Agents*, 403 U.S. 338 (1971) and the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq.¹ Plaintiff claims Defendants acted with deliberate indifference to

¹ “*Bivens* established that compensable injury to a constitutionally protected interest [caused by federal officials alleged to have acted under color of federal law] could be vindicated by a suit for damages invoking the general federal question jurisdiction of the federal courts.” *Butz v. Economou*, 438 U.S. 478, 486 (1978); *Wilkie v. Robbins*, 551 U.S. 537, __, 127 S. Ct. 2588, 2597 (2007). “Actions

1 his serious medical needs while he was detained in the San Diego Correctional Facility from July
 2 2007 through February 2008. (Compl. ¶ 25.) Plaintiff seeks compensatory and punitive
 3 damages as well as attorney's fees. (*Id.* ¶¶ 39, 46.)

4 **I.**

5 **Failure to Pay Filing Fee or Request IFP Status**

6 All parties instituting any civil action, suit or proceeding in any district court of the
 7 United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See*
 8 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay this filing fee only
 9 if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C.
 10 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*,
 11 169 F.3d 1176, 1177 (9th Cir. 1999). Here, Plaintiff has not prepaid the \$350 filing fee required
 12 to commence a civil action, nor has he submitted a Motion to Proceed IFP. Therefore, the case
 13 must be dismissed pursuant to 28 U.S.C. § 1914(a). *Id.*

14 **II.**

15 **Conclusion and Order**

16 For the reasons set forth above, the Court hereby:

17 (1) **DISMISSES** this action *sua sponte* without prejudice for failing to pay the \$350
 18 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and
 19 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to:
 20 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed
 21 IFP which includes a certified copy of his trust account statement for the 6-month period
 22 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).²

23 _____
 24 under § 1983 and those under *Bivens* are identical save for replacement of a state actor under § 1983 by
 a federal actor under *Bivens*." *Van Strum v. Lawn*, 940 F.2d 406, 409 (9th Cir. 1991).

25 ² Plaintiff is cautioned that if he chooses to proceed further with this action either by paying the
 26 full civil filing fee required by 28 U.S.C. § 1914(a), or moving to proceed IFP, his Complaint will be
 27 subject to the mandatory screening provisions of 28 U.S.C. § 1915A(b) and 28 U.S.C. § 1915(e)(2)(b).
 28 *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e)
 "not only permits but requires" the court to *sua sponte* dismiss an *in forma pauperis* complaint that fails
 to state a claim); *see also Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (discussing *sua sponte*
 screening required by 28 U.S.C. § 1915A(b)). Moreover, such a dismissal may be counted as a "strike"
 against Plaintiff if he requests IFP status in any future civil action filed while he is incarcerated. *See*

1 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with this
2 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
3 *Pauperis*." If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
4 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without
5 prejudice and without further Order of the Court.

DATED: April 29, 2009

WILLIAM Q. HAYES
United States District Judge

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²⁸ *Andrews*, 493 F.3d at 1052 (under the Prison Litigation Reform Act, “[p]risoners who have repeatedly brought unsuccessful suits may entirely be barred from IFP status under the three strikes rule[.]”).